

THE UNITED STATES DISTRICT COURT
FOR
THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM PINERO,

Petitioner,

-Against-

01-CV-09991(DLC)(DFE)

Charles Greiner, Superintendent of
Green Haven Correctional Facility,

Respondent.

NOTICE OF APPEAL

PLEASE TAKE NOTICE, that William Pinero, Petitioner, in the above captioned action hereby appeals to the United States Court of Appeals for the Second Circuit from a judgment denying petitioner a writ of habeas corpus and a certificate of appeal, entered in this action on September 18, 2007.

Dated: October 3, 2007

Respectfully Submitted,

/S/
Attorney for Appellant-Petitioner
Damond J. Carter, Esq.
Law Office of Damond J. Carter, PLLC
P.O. Box 6365
Albany, New York 12206
(518) 438-1676 Telephone

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

William Pinero,	:	Declaration in Support of Petitioner's Application to Proceed as a Poor Person and for Counsel's Admission Pro Hac Vice to Prosecute this Application and Related Proceedings
Plaintiff,	:	
-Against-	:	
Charles Greiner, Superintendent of Green Haven Correctional Facility,	:	
Respondent.	:	Docket No. _____

County of New York

State of New York

I, Damond J. Carter, affirm the following under the penalties of perjury,

1. That I am an attorney admitted to practice before the courts of the State of New York, as well as the Eastern and Southern District Courts of New York, and an attorney also in good standing with said bars.
2. That I submit this Declaration in support of counsel's application for pro hac vice admission, so as to prosecute Petitioner's application for poor persons status, as well as all matters related to Petitioner's application seeking a certificate of appealability and if granted any subsequent appeal and related matters.
3. That counsel was admitted to the bar of the State of New York January 2000.
4. That counsel was admitted to the bars of the Eastern and Southern District Courts of New York about July 13, 2004.
5. That counsel is in good standing with the bars of the State of New York, Eastern District Court of New York and Southern District Courts of New York.
6. That counsel prosecuted some of this matter in the Eastern District Court of New York, and that counsel filed an appeal of the District Court's decision in question.
7. That counsel is not a member of the bar of the U.S. Court of Appeals for the Second Circuit.

8. Petitioner filed an application for habeas relief in the instant matter, on a number of grounds, including that the trial court improperly allowed the admission of uncharged crimes that all parties conceded that Petitioner had not been identified as being a party thereto, that the trial court's alibi charge was constitutionally imbalanced, that trial counsel was ineffective in failing to conduct a probable cause hearing and that trial counsel was ineffective during the negotiations of a possible plea bargain.
9. The magistrate court recommended that Petitioner's petition be denied. The District Court adopted that recommended, denied Petitioner's petition and a certificate of appealability. In so doing, the District Court stated that if Petitioner proceeded to seek an application for a certificate of appealability that petitioner's act of so seeking a certificate of appealability despite the denials, that Petitioner's certificate of appeal would not be sought in good faith.
10. Counsel submits this declaration to establish the factual basis that Petitioner's application for a certificate of appealability is not taken in bad faith as decided by the District Court pursuant to 28 U.S.C. § 1915.
11. Petitioner having been an inmate in the instant action for about 10 years, he has been relegated to prison industry for the same. Therefore, this Court can take judicial notice that Petitioner's prison industry wages are extremely compromised wages to say the least. As a result, Petitioner is unable to pay the costs associated with taking an appeal. Therefore, Petitioner moves this Court to grant Petitioner in forma pauperis status pursuant to 28 U.S.C. 1915(A)(1).
12. Counsel submits this application in Petitioner's behalf, because of the time constraints innate in seeking a certificate of appeal and the innate compromised time regarding the back and forth communication with Petitioner, a prisoner of New York's Department of Correction.

Dated: October 3, 2007

/S/
Attorney for Petitioner
Damond J. Carter, Esq.